Murison, C.J.—The applicant in this case sued the defendant in the District Court for $90, wages due. The defendant counterclaimed for $41.59. Judgment was given against the applicant on his claim and for the defendant on his counterclaim.

The applicant now applies for revision of this judgment.

Section 13 (1) of the Ordinance No. 101 (Courts) is as follows:

> "13(1). No appeal shall lie from the decision of a District Court when the amount in dispute in the action or suit or the value of the subject matter thereof does not exceed one hundred dollars, but the Supreme Court, either of its own motion or on the application within fourteen days of any party aggrieved by a decision on the ground that such decision is wrong in law, may call for the proceedings and may give such orders thereon, either by directing a new trial or otherwise as seems to be necessary to secure substantial justice being done."

The question is whether "the amount in dispute in the action" in this case exceeds $100 that is whether it is $90 or $90 plus $41.59.

In my opinion the amount in dispute is the amount of the claim added to the amount of the counterclaim, for both sums are in dispute; that is, the amount of $131.59 is in dispute.

The case, therefore, is one for appeal not revision.

The application is dismissed.

It follows from what I have said that the Assistant District Judge had no jurisdiction (under section 38 (1) of the Ordinance No. 101 (Courts) to try this case.

I, therefore, order that the case be retried before the District Judge.

Order accordingly.

(Original Civil Jurisdiction)

Murison, C.J. and Whitley, J.

February 20, 1933.

IN *RE* ORDINANCE NO: 101 (COURTS)

and

IN *RE* A SOLICITOR

(Penang Originating Motion No. 15 of 1932)

Solicitor—neglect to procure registration of deeds—fees and expenses paid by client—partnership with unqualified person—Ordinance No. 101 (Courts) Ss. 90 (5) (b), 91 (b), and (i).

A Solicitor is not guilty of professional misconduct in not having procured the registration of certain title deeds although he has received money from his clients for that purpose.

In re A Solicitor, (1895) 11 T.L.R. 169 applied.

The fact of a partnership between a Solicitor and an unqualified person is not sufficient ground for striking the Solicitor off the rolls of the Court. The only penalty attaching to such an offence is a fine up to $500/-. The particular provision of Section 90 (5) (b) of Ordinance No. 101 (Courts) prevails over the general provision of Section 91 (2) (i) of the same Ordinance. A charge under Section 90 (5) (b) of the Courts Ordinance is not a subject for enquiry by a Bar Committee.

Where it is proved that a Solicitor permits an unqualified person to use his name in non-contentious business, such conduct will not justify an order to strike the Solicitor off the rolls.

MOTION by the Penang Bar Committee for an order calling upon the Respondent to show cause why he should not be struck off the rolls. The grounds of complaint are fully set out in the Judgment below.

Hume for the Penang Bar Committee.

The Respondent appeared in person.

Cur. Adv. Vult.

The Judgment of the Court was delivered by—

Murison, C. J.—This is a motion by the Penang Bar Committee calling upon the Respondent, an Indian advocate and solicitor of this Court, to show cause why he should not be struck off the Roll under section 91 subsection (2) clauses (b) (h) and (i) of Ordinance No. 101 (Courts) and why he should not pay the costs of the motion.

The relevant clauses of Ordinance No. 101 (Courts) are as follows:—

> 91.—(1) Solicitors and conveyancers shall be subject to the control of the Supreme Court, and shall be liable, on due cause shown, to be suspended from practice for any period not exceeding two years or struck off the roll of the Court.
>
> "(2) Such due cause may be shown by proof that such person
>
> (b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty;
>
> (h) allows any clerk or other unqualified person to undertake or carry on legal business in his name, such other person not being under such direct and immediate control of his principal as to ensure that he does not act without proper supervision; or
>
> (i) has done some other act which would render him liable to be disbarred or suspended or struck off the rolls of the Court if a barrister or solicitor in England."

Mr. Hume appeared for the Bar Committee of Penang. The Respondent appeared in person.

The title of the proceedings was altered during the hearing by the substitution of the words "An advocate and solicitor" for the Respondent's name.

The motion is supported by an affidavit sworn by Mr. Paul Regester, an advocate and solicitor of this Court, and Secretary of the Penang Bar Committee.

It sets out that the Respondent practises in the State of Perak, one of the F.M.S., and in the Dindings which are part of this Colony.

It further states the following facts.

On the 29th July, 1932 the Penang Bar Committee received two complaints, one from Vellayappa Chetty living at Lumut in the Dindings and the other from Palaniappa Chetty of the same address. Both alleged

irregularities in the Respondent's conduct of certain conveyancing matters.

The Bar Committee then decided to hold an enquiry under section 96 of Ordinance No. 101 (Courts) and the Respondent received notice to attend on the 10th September, 1932. He failed to attend, and sent no excuse or explanation.

On the 12th September a third complaint of the Respondent's conduct, dated the 9th September, 1932 was received by the Committee from a Tamil woman named Pommamal.

The Committee then obtained by Originating Summons (No. 111 of 1932) an order of the Court that the Respondent, the first two complainants and a witness appear before the Bar Committee at Penang on the 1st October, 1932. A copy of the order was duly served on the Respondent.

On the 23rd September the Committee wrote to the Respondent saying that Pommamal's complaint would also be enquired into at the same time.

The Respondent again failed to attend, and again sent no excuse or explanation.

The Committee, in the absence of the Respondent, duly held their enquiry and a copy of the notes of evidence, with the relevant exhibits, and a copy of their Report dated the 12th October, 1932, are before the Court.

The findings of the Committee were as follows:

(1) That the Respondent in all three cases had been guilty of the misconduct complained of, viz., of failing and neglecting to procure the registration of title deeds entrusted to him for that purpose, although he had received from the clients his fees and expenses for procuring such registration.

In regard to this charge they also found that the neglect to procure registration extended, in the case of the two chetties, to a period of about 21 months and 6 months respectively, and that in the case of Pommamal the deeds were still unregistered although they had been entrusted to the Respondent on the 3rd December, 1931.

(2) That the Respondent had failed to keep proper accounts.

With regard to this charge Mr. Hume, invited by the Court to say under which head of section 91 (1) it came, said that he did not press it. The Bar Committee on this point appear to have anticipated the Solicitors Amendment Act 1933 which is at present in the form of a Bill before Parliament.

(3) That the Respondent had allowed his business to be partly controlled by an unqualified person, and had shared fees and profits with him.

The reference here is to Respondent's clerk, one Khoo Soon Tuan.

(4) That the Respondent had been guilty of gross contempt of Court in not obeying the order for his attendance before the Committee.

This point was not pressed by Mr. Hume for the Committee.

We are therefore, left with two findings of professional misconduct by the Respondent—Nos. 1 and 3 above.

Our position in regard to these findings appears to be defined in the case of *Allinson* v. *General Council of Medical Education and Registration*, (1894) 1 Q.B. 750 where Lopes, L.J. said:—

> "The Master of the Rolls has adopted a definition which, with his assistance and that of my my brother Davey, I prepared. I will read it again. 'If it is shewn that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable, by his professional bretnren of good repute and competency,' then it is open to the General Medical Council to say that he has been guilty of 'infamous conduct in a professional respect.' "

This definition was followed in the case of *In re A Solicitor*, (1912) 1 K.B., at page 311. There Darling, J. added. "The Law Society are very good judges of what is professional misconduct as a solicitor just as the General Medical Council are very good judges of what is misconduct as a medical man. I see no reason for coming to any other conclusion than that to which the Committee of the Law Society has come."

The only question, therefore, for us is whether the Bar Committee of Penang came to conclusions which were reasonable: and whether the acts which are proved are such as to legally justify this Court in acceding to the motion.

The Respondent before us made a long and confused harangue for about two hours. In despair, we suggested that he might cease addressing the Court and write down possibly with somebody's assistance, what points he considered to be in his favour. The Respondent and Mr. Hume, to the great relief of the Court, agreed to this course. These points were in due course sent to us by the Respondent and we have carefully considered them.

His points Nos. 1 and 2 contend that the complaints of the two Chetties and Pommamal do not comply with the requirements of section 96 (1) (b) of Ordinance No. 101. Palaniappa Chetty's letter of the 6th August, 1932 and the complaint of Vellayappa Chetty's attorney of the 29th July, 1932 to the Penang Bar Committee are both clearly valid complaints. Pommamal's letter of

the 9th September, 1932 to the Penang Bar Committee is equally a valid complaint.

The remaining grounds are futile except No. 3 (that failure to effect registration is not professional misconduct). We will deal with this point presently.

We revert now to the two surviving findings of the Penang Bar Committee.

The position in regard to the first of these is that the Respondent had received from clients payment of monies for the purpose of getting deeds registered, and that he did not do so. It appears however from various cases in England that this does not constitute professional misconduct.

Thus in *In the Matter of a Solicitor*, (1895) 11 Times L.R., 169) a solicitor had been employed in April 1893 for 10/- to recover £12.6.8 for a charwoman. He recovered it in a week, but would not pay the woman her money. He had at length paid her £3.16 of the amount by February, 1894. The Committee of the Incorporated Law Society, after the woman had made application to a magistrate upon complaint and to the Hull Law Society, reported in due course that the solicitor was guilty of professional misconduct. Application was then made to the Court to strike the solicitor off the Rolls. Wills, J. said there was no professional misconduct, and that it merely came to this: that the solicitor had not paid the money. There must be something, he said, amounting to misrepresentation or deceit. If the Committee had found that the solicitor would not have paid the money unless application had been made to the Magistrate the case said Wills, J. would have been different.

The facts of that case appear to us to coincide in principle with the facts of this case. That registration had also to be effected in our case does not appear to make any material difference. The Respondent's conduct, in other words, would seem to have amounted only to gross negligence and that is not enough. We, therefore accept the authority quoted, and conclude that upon this head, the Penang Bar Committee did not have reasonable grounds for finding professional misconduct.

The other of the two grounds substantially relied upon before us, upon which the Committee found professional misconduct, is that the Respondent allowed his business to be partly controlled by, and that he shared fees and profits with, his clerk, an unqualified person.

The Respondent nowhere denies these charges.

The Bar Committee do not indicate under which head of section 91 (2) their finding comes.

There are several alternatives. First, the finding may rest upon grossly improper conduct in his professional duty (clause (b)) Or, secondly, it may rest on clause (h) which is allowing any unqualified person to carry on legal business in his principal's name, such person not being under the proper control of his principal. Or, thirdly, it may rest on clause (i) which includes any acts for which in England a person may be disbarred or suspended or struck off the rolls.

The evidence of the clerk is as follows:—

"*Kboo Toon Suan, Sitiawan, duly affirmed stated*--

"I was not employed in the office as a clerk, I was only helping.

Q. How long were you helping?
A. From 1930 until 17th May.
Q. You do not call yourself his clerk?
A. No, I run the office for him.
Q. Do you pay him?
A. I was financing him.
Q. You were financing him from 1930 up to the time you left?
A. Yes.
Q. Did you pay the office rent?
A. Yes, I paid everything.
Q. How were you reimbursed, did you share the fees?
A. Every evening whatever monies were in hand were shared.
Q. In what proportion?
A. Fifty-fifty."

The following is a further extract from the evidence of the clerk:—

"Q. Were you in the habit of sending documents for registration without his sanction?
A. Yes.
Q. Where did you learn to draw up conveyances and mortgages?
A. From Siriwardhena.
Q. You say you were never an employee of his? Were you a partner in the firm?
A. I cannot say I was a partner; the proceeds were divided, that is all, but I cannot say I was a partner.
Q. Supposing you were in the office and Mr. Siriwardhena was out or away and a client came, were you in the habit of advising clients?
A. Nothing was done in his absence.
Q. But you would take instructions from clients if he was not there?
A. Yes.
Q. Did you sign letters for him?
A. Yes, I did.
Q. Had you any written authority from him to sign letters and receipts?
A. No.
Q. You say there was no safe in his office?
A. There was no safe in the office but I had one in my house.
Q. You realise the distinction between clients' money and fees?

A. Yes, sometimes the stamping fees were kept by him and sometimes by me.
Q. Was Siriwardhena aware of every letter that was written from his office?
A. After I signed a letter it was left on his table. He used to draft all letters."

Further support for the finding of the Bar Committee is found in the evidence of Palaniappa Chettiar. It is as follows:—

"Q. Do you remember giving instructions for the preparation of this mortgage in March?
A. Yes.
Q. To whom did you give these instructions?
A. To the clerk.
Q. Did you see Siriwardhena on that day at all?
A. Yes.
Q. Had you any conversation with him about this mortgage on that day?
A. Yes, I talked to the lawyer about the mortgage.
Q. To arrange the amount of these fees with him?
A. Yes."

We gather from this evidence that the witness saw Toon Suan at one time and the Respondent at another time, though the point is not entirely clear. Had he seen both together, however, we think he would have said so and apparently the only conversation with the Respondent was about the payment of the fees.

This evidence, it is claimed, amounts to this: the Respondent allowed Toon Suan (1) to send documents for registration without his sanction; and (2) to use his name for the clerk's profit and to share profits with him and (3) to take instructions from a client if he was not present himself;

With regard to the three points above mentioned the first (taking documents for registration without his principal's sanction) is not, in our opinion, an offence for which a Solicitor can be struck off the Rolls. (*Law Society* v. *Waterlow*, (1883) 8 A.C. 407 at 411).

With regard to the second point it will be convenient to deal first with the finding that the Respondent allowed the clerk to share profits with him. That he did so is clear from the clerk's evidence which he does not deny.

By section 91 (2) (i) of Ordinance No. 101 (Courts) the English law in regard to this matter is incorporated in our law, and in the ordinary way we should, therefore, turn to the English decisions in cases where there was a partnership between a solicitor and an unqualified person. It is clear from cases like *Tench* v. *Roberts*, (1819) quoted in 6 Maddock and Geldart's Report at page 145, and *In the matter* of *King*, (1834) 1 Ad. and Ellis page 560) that such a partnership or a sharing of profits is a good ground in England for striking a solicitor off the Rolls. But in the Colony we have an additional factor to consider, for it is provided by section 90 (5) (b) of Ordinance No. 101 (Courts) that any person who practises as an advocate and solicitor in partnership with a person not having a certificate to practise is liable to a fine not exceeding five hundred dollars.

We have here, then a conflict between a general provision and a particular provision of law. In *Cox* v. *Hakee*. (1890) 15 A.C. 506 at page 509 Lord Herschell said:—

> "It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look, not only at the provision immediately under construction, but at any others found in connection with it which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation"

And again in *Blackwood* v. *B.*, (1882) 8 A.C. 82 at page 84 it was said that:—

> "One of the safest guides to the construction of sweeping general words which it is difficult to apply in their full literal sense is to examine other words of like import in the same instrument, and to see what limitations must be imposed on them. If it is found that a number of such expressions have to be subjected to limitations or qualifications and that such limitations or qualifications are of the same nature that forms a strong argument for subjecting the expression in dispute to a like limitation or qualification".

It, therefore appears to us that the particular provision of section 90 (5) (b) must prevail over the general provision of section 91 (2) (i) and that if a partnership is proved the only penalty attaching is a fine up to $500. The sharing of profits is *prima facie* evidence of a partnership, (section 2 (3) of the Partnership Act 1890) and there appears to be no elements in the relations of the Respondent and his clerk which disturbed this idea. On the contrary there was a contribution of capital by the clerk, and an apparent readiness by the clerk to share losses, for the clerk paid the rent and as he says "financed" the Respondent. In our opinion there was a partnership between these two persons, and the Respondent therefore would seem to be liable to a fine of $500.

The second subdivision of the point under consideration relates to the Respondent giving permission to the clerk to use his name.

Under section 91 (2) (i) which we have set out above the reasons for which solicitors may be struck off the Roll in England apply in the Colony. We turn. therefore, to the English law on the subject.

Now section 51 (1) and (2) of the Solicitors Act 1932—which replaces similar provisions in section 32 of

the Solicitors Act of 1843 and in section 11 of the Act for continuation of certain expiring laws passed in 1749 (12 Geo. II c. 46)—is as follows:—

> "51—(1) No solicitor shall wilfully and knowingly act as agent in any action, or in any matter in bankruptcy for any unqualified person, or permit his name to be made use of in any such action, or matter upon the account, or for the profit, of any unqualified person, or send any process to any unqualified person, or do any other act enabling any unqualified person to appear, act or practise in any respect as a solicitor in any such action or matter.
>
> "(2). Where it appears to the disciplinary committee or, as the case may be, to the High Court, that a solicitor has acted in contravention of this section, his name shall be struck off the Roll."

We leave subsection (1) for a moment.

A difficulty arises in regard to subsection (2). Is it incorporated into our law by section 91 (2) of Ordinance No. 101 (Courts) or not? If it is, we have a finding by the disciplinary committee and this Court has, therefore, no option but to strike the Respondent off the Roll. What then does clause (1) say? It says that the Respondent may be struck off if he does any act which would render him liable to be disbarred or suspended or struck off if he were a barrister or solicitor in England. In our opinion the subsection in question confers a compulsory jurisdiction in certain cases. But the condition underlying the jurisdiction is that Respondent shall have done a certain act; and, as we read the subsection, it is for the Court to find that the act was done. The words of the subsection do not say that Court shall accept as conclusive the finding of the disciplinary committee that the act was done. The subsection, therefore, in our opinion, is not incorporated into our law by clause (i) and we are, therefore, thrown back on the provisions of subsection (1) of section 51 of the Act of 1932.

We regret that we were offered no argument upon this point.

We go back now to subsection (1) of section 51 of the Act of 1932. The subsection concerns only acts done "in any action or in any matter of bankruptcy" No question arises in regard to bankruptcy and there is no evidence that anything which the clerk did was done in an action. The word "action" is not defined in the Act of 1932 nor in any of the preceding acts. In the general law it is a generic term. It means "litigation in a civil Court for the recovery of individual right, or redress of individual wrong". (*Stroud sub. verb.* and the authorities there cited). But what evidence there is of the clerk taking instructions relates only to non-contentious business. Here again had the examination of the witness been directed to what was done in an action an offence might possibly have been brought home against the Respondent. As it is we are of opinion that there is no evidence to support the finding of the Bar Committee on this head.

We come therefore to the conclusion, first, that in regard to the only two findings of the Bar Committee which were proceeded with before us there are no legal grounds upon which we can make the order asked for; and, secondly, that the only offence which the Respondent seems to have committed is the partnership offence against section 90 (5) (b) of Ordinance No. 101 (Courts).

With regard to the partnership offence it is to be observed that the Respondent has never been charged with it. It is, in fact, not a subject for enquiry by a Bar Committee at all. It seems to be a sort of statutory criminal offence. By subsection (7) of section 90 such offence must be tried by the District Court. No doubt this Court, the Supreme Court, has jurisdiction to try it, but as there has been no direct issue between the Respondent and any prosecutor in regard to such a charge, and it is a charge which is not within the scope either of of this Motion or of the Bar Enquiry which preceded it we must decline to say anything about it. So far as we are concerned the matter is still at large.

We wish to say that we have had the greatest difficulty with this case. This is due partly to the fact that the examination of the witnesses at the Bar Enquiry was based largely upon a lack of appreciation of the acts for which a solicitor and advocate can be struck off the Rolls, partly to the fact that none of the findings of the Bar Committee is connected with any specific clause of section 91 (b); and partly to the very casual presentation of the case before us.

The motion is dismissed, but without costs.

Motion dismissed.

(Original Civil Jurisdiction)

Whitley, J.

December 15, 1932.

IN THE MATTER OF THE PETITION OF RIGHT OF TAN ENG HOE (PETITIONER)..Plaintiff.

vs.

THE ATTORNEY-GENERAL OF THE STRAITS SETTLEMENTS.....Defendant.

(Malacca Crown Suit No: 4 of 1932)

Damages—wrongful arrest—justification—reasonable suspicion—exemption from liability.

Where A., whose habits and movements answered to the description given of those of B. against whom a report of cheating had been made, was arrested as the result of investigation and enquiries by the Police and it was subsequently discovered that he was not the real offender. In an action by A. for damages for wrongful arrest:—

Held, that the circumstances were such that any reasonable man would have fairly suspected A. of being the person who had committed the offence complained of and that the Police were justified in effecting the arrest.

Hoye v. *Bush*, 133 Eng. Rep. 545 applied.